APPEAL NO. 021645
FILED AUGUST 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 28, 2002. With respect to the issue before him, the hearing officer determined the respondent's (claimant) impairment rating (IR) is 27%, as corrected. In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR. In addition, the carrier asserts error in the hearing officer's having denied its request to hold the record open to send an unanswered written deposition question to the designated doctor, Dr. H. The file does not contain a response to the appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that Dr. H is the designated doctor selected by the Texas Workers' Compensation Commission (Commission); and that the claimant reached maximum medical improvement (MMI) on August 7, 2000. A medical report by Dr. H dated October 9, 2001, reflects that he assessed the claimant with a 29% IR. Dr. H calculated the claimant's IR by assigning 5% impairment due to a specific disorder of the spine (Table 49, Section I, A, of the Guides to the Evaluation of Permanent Impairment, Third Edition, Second Printing (AMA Guides) with compression); 20% for angle of minimum kyphosis (thoracic ankylosis in extension), 2% for thoracic flexion, 2% for thoracic right rotation, and 1% for thoracic left rotation, for a total IR of 25% for loss of thoracic range of motion (ROM). Dr. H then combined the 5% specific disorder rating with the 25% thoracic ROM rating, yielding a 29% total IR. At the request of the carrier, the Commission sought clarification of Dr. H's IR and on December 20, 2001, Dr. H replied by letter that he stood by the 29% IR. In an April 1, 2002, letter, Dr. H noted that he had made some errors in assessing the claimant's IR and asked to reexamine the claimant in order to determine his IR. On April 10, 2002, the hearing officer approved the carrier's request to send a deposition on written questions to Dr. H, which questions concerned the designated doctor's initial IR. On May 3, 2002, Dr. H amended his report to show that after reexamination of the claimant, the "angle of minimum kyphosis" was 72 degrees, while it had previously been 70 degrees. Dr. H noted that the rating for thoracic ankylosis remained at 20% and that the "other measurements were rechecked and found to be similar (within 5 degrees) to those found in my previous report." Thus, the designated doctor stated that his "original values will be used to determine the impairment for the other motions." Dr. H concluded that the 29% IR stands.

Initially, the carrier contends the hearing officer committed reversible error by denying the carrier's request to leave the record open to ask the designated doctor to answer the only question from its deposition on written questions that the designated

doctor had not answered in his reexamination of the claimant. Specifically, the carrier requested that the designated doctor be asked if it is appropriate under the AMA Guides to assign a rating for both thoracic ankylosis and flexion ROM. While we would generally agree with the carrier's assertion that, where, as here, a question has been sent to the designated doctor and it remains unanswered, it is generally appropriate for the Commission to ensure that a question is answered. However, we cannot agree that the hearing officer committed reversible error in this instance by failing to hold the record open in this case because the response to the question is apparent from a review of the AMA Guides. Figure 83b, the thoracic ROM chart, specifically states that the evaluator should "use larger of either ankylosis or flexion impairment." Thus, the hearing officer could easily resolve the problem with the IR by removing the 2% rating assigned for thoracic flexion ROM loss from the total rating, which yielded the 27% IR adopted by the hearing officer.

The carrier also contends that Dr. H's medical reports are "so flawed that they should not be afforded presumptive weight." In so arguing, the carrier's only specific statement is that the method the designated doctor used to calculate the claimant's IR is "quite different from" that of the other two doctors who assigned an IR to the claimant. Sections 408.122(c) and 408.125(e) of the 1989 Act provide that a report of a Commission-appointed designated doctor shall have presumptive weight on the issues of MMI and IR, and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. The hearing officer noted that "there is nothing close to a 'great weight' of contrary evidence presented here, and [Dr. H's] report, as modified, will be adopted." Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so against the great weight of the evidence as to compel its reversal on appeal. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

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_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge